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10/600,263

06/20/2003

Wayne Allen Wade

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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/600,263
Filing Date: June 20, 2003
Appellant(s): WADE, WAYNE ALLEN

**MAILED
SEP 19 2007
GROUP 3700**

Daniel J. Polglaze
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 5, 2007 appealing from the Office action mailed April 28, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,552,599	REDDING	1-1971
5,667,113	CLARKE et al.	9-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4-8, 18, 19, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Redding in view of Clarke et al. (Clarke). (this rejection has been copied from the April 28, 2006 final Office action.)

Redding discloses a thermoplastic (polyethylene) molded fuel tank as shown in Fig. 4 by rotating 90 degrees in either direction comprising an upper chamber connected to a lower chamber, circular first ports formed with an opening in the upper chamber and circular hollow second ports formed in an opening in the lower chamber, and molded through tapered columns (each column formed by an opposing pair of projections 30, one upper projection connected with a first port and an lower opposing, adjacent projection connected with a second port) connected with the first and second ports. Redding is inherently capable of performing as a septic tank and (1) can be installed underground and (2) can withstand external forces of an underground tank backfilled with soil after being installed underground as the columns add sufficient strength to withstand exterior forces. Redding discloses the invention except for the size of the opening

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formed in the second ports being less than the size of the openings formed in the first ports.

Clarke teaches a molded fuel tank having a first port (rear opening 64) connected to an opposed second port (front opening 62), the diameter of the second port opening is less than the diameter of the first port opening, a molded through tapered column (internal chamber 58) engages the first and second ports. It would have been obvious to modify Redding so that the second port opening diameter is less than the first port opening diameter in order to provide the desired reinforcing at a center of the tank to resist expansion and bursting from internal pressure, also the opening through the column extends from the first port to the second port and eliminates the need for tank molded material inside the column producing a saving of material.

Re claims 6-8, the ranges of thickness are obvious in view of the lack of criticality given to the three ranges mentioned as motivated by a need for a more durable, stronger and higher impact resistant tank one of ordinary skill would increase thickness and as motivated by a need for a lighter tank and a tank that uses less material one of ordinary skill would decrease thickness. A medium thickness tank optimizes the needs associated with increased thicknesses and the needs associated with decreased thicknesses.

(10) Response to Argument

Appellant believes that Redding fails to show two major parts of claim 1, (1) that the columns are molded through and (2) that the columns are hollow. Appellant directs attention to col. 3, line 30 through col. 4, line 5 wherein the connecting wall 74 is discussed as having fused truncated ends 72. Although the fused ends 72 which are connected to each other are designed to separate when a certain maximum internal pressure is reached, the fused ends form a connection

which reinforces the tank and maintains tank shape below the maximum design pressure. Most importantly, the fused ends 72 are fused to each other as is clearly shown in the cross sections of Fig. 4 and 5. There can be no mistake that this fused structure is equivalent to a molded through structure. Appellant doesn't specify any structural difference between these two structures, fused and molded through.

Regarding hollow (the second major part), a structure only needs to have an opening or cavity to be hollow. Redding clearly shows the cavity within the tapered columns.

Appellant's statement that Redding is specifically design to give way at certain maximum internal pressure is of little consequence, all tanks will fail at a design pressure. The design parameters of Redding can set the internal pressure high enough to work for a septic system. Septic systems are not designed for especially high internal pressures as most are vented to ambient pressure and internal pressure is detrimental in a septic system because it causes back-up or back flow into a residence. There is no discussion of an internal design pressure in appellant's claims. Further, stating that the primary reference, Redding, is designed for internal pressure doesn't sufficiently rebut that Redding is capable of performing as a septic tank.

Appellant statement that "molded through" and "hollow" preclude walls or obstructions is not well taken. Appellant refers to page 10, lines 3-17 of the specification which fails to state any qualification that "molded through" and "hollow" mean that there are no walls or obstructions. The specification at page 10, lines 3-17 does discuss filling or back-filling with dirt and the resistance to buoyancy forces. The tapered column of Redding can be filled or back filled with dirt and the additional weight of the dirt with the weight of the tank would resist buoyancy forces. The specification doesn't support appellant's position.

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Re Clarke, the teachings are not contested by appellant.

Re claim 18, the language is similar only in that "hollow" appears to limit the columns.

The "molded through" limitation is not present in claim 18 or any of its dependent claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Evidence Appendix

Appellant has not submitted evidence in the evidence appendix.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Stephen J. Castellano/
Stephen J. Castellano
Primary Examiner

Conferees:

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